?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 11.10.2018

*CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

+C.M.A.(MD)No.1186 of 2016

#1.Jeya Chitra
2.Minor M.Arun Kumar
3.Minor M.Viswanathan
4.M.Krishnammal ... Appellants / Petitioners
(Minor petitioners 2 and 3 filing through their mother and next friend i.e., 1st petitioner)

Vs.
$1.P.S.Eswara Moorthy
2.The Divisional Manager,
The New India Assurance Company Limited,
41~B, Vitoria Street, Thoothukudi.
... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.07.2014 made in M.C.O.P.No.68 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

!For Appellants : Mr.A.George Stephen Kanikkai
^For R1 : Mr.B.Rajesh Saravanan
For R2 : Mr.J.S.Murali

:JUDGMENT
This Civil Miscellaneous Appeal has been filed to set aside the award dated 30.07.2014 made in M.C.O.P.No.68 of 2014 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi.

2.The appellants are the claimants in M.C.O.P.No.68 of 2014, claiming a sum of Rs.30,00,000/~ (Rupees Thirty Lakhs Only) for the death of one S.Murugan in the accident that took place on 15.10.2013. The appellants are the legal heirs of the deceased S.Murugan.

3.Before the Tribunal, the first appellant examined herself as P.W.1, one Senthil and Ganesan were examined as P.W.2 and P.W.3, filed 6 documents and the same were marked as Exs.P1 to P6. The respondents did not let in any oral and documentary evidence.

4.The Tribunal considering the pleadings, both oral and documentary evidence, held that the accident occurred due to rash and negligent driving

by the driver of the lorry as well as the deceased, awarded a sum of Rs.3,18,500/~ (Rupees Three Lakhs Eighteen Thousand Five Hundred Only) as compensation to the appellants and directed the respondents to pay compensation to the appellants.

5.Not being satisfied with the award, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing contributory negligence on the part of the deceased, having held that the driver of the lorry was negligent in moving the lorry without verifying, whether anybody was lying under the lorry, and ought to have fixed entire negligence on the driver of the lorry. The notional income fixed and amounts granted on various heads are too meagre.

7.The learned counsel appearing for the first respondent contended that at the time of accident, there was valid insurance policy and in view of the same, only the second respondent is liable to pay compensation and the first respondent / owner of the lorry is not liable to pay any compensation.

8.The learned counsel appearing for the second respondent contended that entire negligence is only on the part of the deceased, as he was lying under the lorry without knowledge of the driver and the compensation awarded by the Tribunal is excessive and prayed for dismissal of this appeal.

9.Heard the learned counsel appearing for the appellants and the respondents and perused the materials available on record.

10.From the materials on record, it is seen that the accident occurred at 2.20 a.m. It is admitted by the second respondent that the deceased was working as cleaner in the offending lorry. The driver moved the lorry to keep the lorry in the line with other vehicles. The Tribunal took note of the fact that the driver of the lorry without verifying whether anybody was lying under the lorry, moved the lorry. Having held so, the Tribunal erred in fixing the 50% contributory negligence on the part of the deceased. The negligence fixed by the Tribunal on the part of the deceased is excessive. At best, the negligence could be fixed at 20% on the deceased, as the deceased, who is a cleaner of the lorry without informing the driver, was sleeping under the lorry. The finding of the Tribunal with regard to the negligence on the part of the driver of the lorry and the deceased is modified as 80% on the driver of the lorry and 20% on the deceased.

11.The appellants have not produced evidence with regard to the income of the deceased. The Tribunal has fixed notional income of the deceased at Rs.4,500/~ (Rupees Four Thousand Five Hundred Only) per month. The same is reasonable. The deceased was aged about 43 years at the time of accident. The appellants are entitled to 10% towards enhancement and 25% towards future prospects.

12.In view of the same, the loss of income of the deceased is modified

as follows:~
?Rs.4,500 + 1125 ~ 1/4 x 14 X 12= Rs.7,08,792/~?

13.The amounts granted by the Tribunal with regard to the loss of consortium, loss of estate and funeral expenses are too meagre and the same have to be enhanced. In view of the same, the amounts granted by the Tribunal under various heads are modified as follows:~

Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
For pecuniary loss of income	5,67,000	7,08,792	enhanced
For funeral expenses	5,000	15,000	enhanced
For loss of estate	10,000	15,000	enhanced
For loss of consortium	25,000	40,000	enhanced
For loss of love and affection	30,000	30,000	confirmed
Total	Rs.6,37,000	Rs.8,08,792	By enhancing a sum of Rs.1,71,792/~

14.With the above modification, this Civil Miscellaneous Appeal is partly allowed. The respondents 1 and 2 are directed jointly and severally to deposit the 80% of the enhanced award amount i.e., Rs.6,47,034/~ (Rupees Six Lakhs Forty Thousand and Thirty Four Only) to the credit of M.C.O.P.No.68 of 2014, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Thoothukudi, along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation with proportionate costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the said award amount, as apportioned by the Tribunal, less the amount, already withdrawn, if any, by making necessary application before the Tribunal. No costs.

To
1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Thoothukudi.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.